

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the Matter of:)	
)	Complaint No. R1-2011-0065
Sonoma County Airport)	
2200 Airport Boulevard)	For
Santa Rosa, CA 95403)	
)	Administrative Civil Liability
<u>Attn: Stephen Lange</u>)	

This Administrative Civil Liability Complaint (Complaint) is issued to Sonoma County Airport (hereinafter Discharger) to assess administrative civil liability for the unpermitted discharge of petroleum based seal coating into Redwood Creek, a watercourse which is tributary to Windsor Creek in the Mark West Creek watershed in violation of provision of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint alleges three (3) days of unpermitted discharge of waste, totaling approximately 654,000 gallons, into waters of the State and of the United States. The violation cited herein was observed by Sonoma County Department of Emergency Services inspectors during the period October 22-24, 2010 and relayed to Regional Water Board staff on October 25, 2010.

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby gives notice that:

1. Discharger is alleged to have violated provisions of law for which the California Regional Water Quality Control Board may impose administrative civil liability under CWC section 13385.

Unless waived, a hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, the Discharger waives this right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on September 29, 2011 at the Regional Water Quality Control Board Office, 5550 Skylane Blvd, Suite A, Santa Rosa, California. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at: http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/ not less than 10 days before the hearing date.

2. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an

increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND/OR REQUIREMENTS APPLICABLE TO THE DISCHARGER:

3. The State of California has adopted a General Permit for Stormwater Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ. The Sonoma County Airport applied for and received an industrial stormwater permit, WDID No. 1B49S000836, in February 1998.
4. Discharge prohibitions under the industrial stormwater permit state that storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.
5. Industrial stormwater permit receiving water limitations state that discharges of storm water to any surface or ground water shall not adversely impact human health or the environment.
6. The Federal Water Pollution Control Act (hereinafter Clean Water Act) Section 301 (33 U.S.C.) Section 1311 prohibits all discharges of pollutants to navigable waters unless such discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) permit for the pollutants of concern. California Water Code (Water Code) section 13376 provides that any person discharging pollutants or proposing to discharge pollutants to navigable waters shall file a report of waste discharge.
7. CWC section 13263(g) states, "All discharges of waste into waters of the state are privileges, not rights."

ALLEGED VIOLATION OF PROHIBITIONS, PROVISIONS, AND/OR REQUIREMENTS APPLICABLE TO THE DISCHARGER

8. Violation: The Discharger and/or its agent(s) violated its industrial stormwater permit by discharging petroleum-based seal coating to surface water without obtaining coverage under an appropriate waste discharge permit and/or filing a report of waste discharge pursuant to Water Code sections 13260 and/or 13376.

FACTUAL BASIS FOR THE ALLEGED VIOLATION

The following evidence supports the alleged violation described above:

9. On October 25, 2010, Regional Water Board staff received a complaint alleging stormwater runoff had washed recently applied seal coating off approximately 5 acres

of asphalt airport parking and airplane hangar area tarmac from a seal coat application occurring on real property owned by the County of Sonoma at 2200 Airport Boulevard in Santa Rosa. This discharge occurred over a three day storm event.

10. On October 25, 2010, at approximately 1000 hours, Regional Water Board staff investigated the alleged complaint. The inspection began with staff meeting onsite with personnel from the Sonoma County Airport, Sonoma County Department of Emergency Services, the seal coating company president and their subcontractors. Weather at the time of the meeting was cloudy and clearing after three days of moderate to heavy rainfall. Regional Water Board staff observed areas of petroleum-stained sand on the asphalt and evidence that petroleum product had flowed to and entered onsite storm drains and onsite stormwater detention ponds.
11. Regional Water Board staff found that during a three day period, October 22-24, 2010, prior to the October 25 inspection, Sonoma County Department of Emergency Services had been dispatched (on all three days) to the airport to address the alleged spill. Discharger representatives explained that they had been sealing the asphalt for several days and were aware that rain was coming later on October 22. Discharger representatives stated that at 0100 hours on Friday morning, October 22, the rains started, six hours earlier than anticipated, causing the still uncured seal coat to become mobilized by the stormwater runoff and to begin discharging into the storm drain system. Moderate to heavy rains continued from that time until early that following Monday morning.
12. During the subsequent 72-hour period, the Discharger's contractor reportedly undertook various actions in order to mitigate the seal coat runoff. This included collecting as much runoff as possible by immediately blocking the storm drain, pumping contaminated runoff with a vac truck and discharging into several Baker Tanks for storage, collecting sand grit, placing absorbent socks around inlets and placing oil absorbent booms in Redwood Creek.
13. Upon questioning the Discharger and/or their agents during the October 25 inspection, Regional Water Board staff learned that approximately 600 gallons of the seal coat had been applied to the tarmac, and had subsequently discharged to onsite storm drains.
14. Emergency Services forwarded photographs to Regional Water Board staff showing the discharge and cleanup efforts that occurred between October 22 and 24, 2010. These pictures depict oil sheens on the asphalt, as well as in onsite stormwater ponds and in Redwood Creek. The pictures also show evidence of efforts made by the Discharger's pavement contractor to mitigate the discharge, including storm drain blocks, collected seal coating product, and oil booms.

15. Regional Water Board staff and the pavement contractor's representative collected water samples from the Baker Tanks and sand grit samples from the parking lot; analytical results revealed petroleum levels as high as 47 mg/l in the stormwater runoff samples collected from the Baker Tanks and total recoverable petroleum hydrocarbon concentrations of up to 2,000 mg/kg in the sand samples.
16. As noted above, staff confirmed that the subject watercourse is tributary to Windsor Creek, which drains to Mark West Creek and, thence, to the Laguna de Santa Rosa, all waters of the State (CWC section 13050(e)) and of the United States (40 CFR 230.3(s)).

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NON COMPLIANCE WITH APPLICABLE REQUIREMENTS

17. Pursuant to CWC section 13385(a)(1), a discharger violating CWC section 13376 is subject to civil liability. The Regional Water Board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - \$10,000 for each day in which the violation occurs, and
 - \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

18. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

19. The specific required factors in CWC section 13385(e) are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation and other matters that justice may require.

20. The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the CWC and the Enforcement Policy.
21. The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

22. Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$10,568 for the violation of CWC section 13385. The proposed liability includes \$1,500 for staff costs.
23. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. (*See City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 *Witkin, Cal. Procedure* (4th ed. 1996) Actions, §405(2), p. 510.)
24. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
25. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

July 6, 2011

Luis G. Rivera
Assistant Executive Officer
Regional Water Board Prosecution Team